

# BUSINESS WEEKLY

under the auspices of  
HaRav Chaim Kohn, shlita



Restoring the Primacy of Choshen Mishpat

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## STORY LINE

by Rabbi Meir Orlan

Halacha Writer for the Business Halacha Institute

## Too Late?

Outside the school, a person stood selling waterproof knapsacks. A sign above him read: "SALE! Only \$100 for a knapsack!"

Mr. Wasser passed by and was interested in the knapsacks, but was concerned about the price.

"The price seems high," he said.

"Oh, no," replied the salesman. "I've seen them sold for \$120, even \$140."

"Okay, I'll take one for my son," said Mr. Wasser. He took out \$100 and purchased a knapsack.

Two days later, Mr. Wasser happened to stop in the local Costco. He saw the exact same knapsack being sold for \$60. He asked whether this was a special price.

"No," replied a salesperson, "this is the regular price."

On the way home, Mr. Wasser stopped off at another store and saw the knapsack of-

fered for \$70. Another store sold it for \$55. A small, old-time store was the most expensive at \$80.

"I was gypped by the salesman outside the school," Mr. Wasser told his wife. "This is a classic case of onaah (overcharging), grounds to invalidate the sale."

"Then return the knapsack to him," she said.

Mr. Wasser returned to the salesman. "Overcharging by a sixth above the going price range is a violation of onaah," he said.

"More than a sixth invalidates the sale. The highest price in the area for the knapsack is only \$80, and many stores were less. I'd like my money back (C.M. 227:4)."

"Had you returned the knapsack yesterday, there would have been something to discuss," said the salesman. "However, now it's too late! Sorry."

"What's the difference?" said Mr. Wasser. "You overcharged me. It's not like I waited a week. I just realized today that you overcharged me. You're required to take it back. Here, ask Rabbi Dayan."

Mr. Wasser dialed Rabbi Dayan and turned on the speakerphone.

"Someone sold me a knapsack two days ago for \$100. I found out today that the very same knapsack runs between \$55 and \$80 in stores. Must he take it back?"

"Although significant overcharging is reason to invalidate a sale, Chazal limited the ability of people to undo sales after time passed," replied Rabbi Dayan. "If enough time passed for the customer to verify the price and he did not do so, we presume that he was mochel — willing to forgo his claim (C.M. 227:7; Sefer Hachinuch #337; Aruch Hashulchan 227:8)."

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## Sanctioned Seizure

My job was terminated. My employer still owes me money. I don't know the exact amount because my employer has possession of the records, but I'm certain it is at least \$2,000. I'm sure that I will never receive that money; my employer has a history of not paying money to former employees.

**Q: Am I permitted to seize the laptop I've been using as security for the money I am owed, or would that be considered theft?**

**A:** Keeping the laptop is not theft, since your intent is to retain it only for security rather than to keep it for yourself or use it (see Ketzos 97:5). On the other hand, once a loan was issued, a lender is prohibited from seizing a borrower's object for security, even if the lender finds the object in the street rather than taking it from the borrower's home (C.M. 97:6, Sema ibid. 7). However, this prohibition is limited to loans or other debts where both parties agreed to a payment

plan (see 67:14). In your case, since you do not even know exactly how much you are owed, you and your employer did not construct a payment plan for the amount you are owed. Therefore, the prohibition against seizing security from a borrower after a loan was issued does not apply (C.M. 97:14). The issue in your case is *avid inish dina l'nafshei* ((taking the law into your own hands). Halacha empowers a person to take the law into his own hands, even when

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"What is the time frame?" asked Mr. Wasser.

"This varies according to circumstances," answered Rabbi Dayan. "The Gemara (B.M. 49b) uses the expression 'time to show a merchant or relative.' If the item is readily available and can easily be checked in other stores, the time would be short — possibly even the same day. Thus, since two days passed, you forfeited the right to demand restitution. Had the item been a specialty one that requires professional evaluation, the time would be longer to afford the opportunity to meet with a specialist (see C.M. 227:17)."

"What if the customer was unable to verify the price immediately?" asked Mr. Wasser. "Let's say an emergency arose shortly after the purchase, and he had to run to the hospital?"

"He would be able to submit a

claim after the emergency was over," replied Rabbi Dayan. "Some allow him only a short time afterward; others say that once he was unable to check promptly, he can claim even a long time afterward (see Sma 227:17; Taz 227:8)."

"Even after time passed, does the seller not have at least a moral obligation to accept the item back?" asked Mr. Wasser.

"The Sma (227:31) indicates that there is not even a moral obligation after this time," added Rabbi Dayan. "However, some authorities write that there is a moral obligation, especially if the buyer was completely unaware that he was being overcharged (see C.M. 227:17; Aruch Hashulchan 227:18).

"I should add, though," concluded Rabbi Dayan, "that if the purchase had been from a store with a defined return policy, those terms would apply."

he does not stand to suffer a financial loss. But there is debate concerning the exact circumstances in which one may take someone else's possessions under the rubric of *avid inish dina l'nafshei*. We will present the practical conclusions that emerge from that discussion.

If you take possession of your employer's possession in a circumstance in which there are no witnesses to testify that you took that object and so you could deny that you took it, according to most Poskim it is permitted for you to seize something as security for the money you are owed. As long as there are no witnesses who can testify that the employee took possession of the employer's object, his claim that he has halachic rights to that object is considered (*migo*) credible (Sema 4:2, Shach 4:3 and Pischei Teshuvah 4:5). However, if it is inevitable that

witnesses will observe you taking your employer's object, according to many Poskim you may not seize anything other than the object that you claim is yours, and furthermore it is necessary to be able to prove definitively in *beis din* that it is your object.

However, most Poskim agree that if one seizes possession of something to force a debtor to address his debt, it is permitted even if he will not be able to demonstrate in *beis din* that the object he seized is his. The rationale is that seizing the object is done to force the debtor to come to *beis din* to resolve the matter and thus is permitted (C.M. 4:1, Sema 3, 4; Taz, Tumim and Nesivos).

However, even if you intend to seize the property without witnesses, you should inform your employer after you seize the property, as we will, *iy"H*, discuss next week.

*For questions on monetary matters, arbitrations, legal documents, wills, ribbis, & Shabbos, please contact our confidential hotline at 877.845.8455 :: ASK@BUSINESSHALACHA.COM*

## Lost and Found #32

**Q: I'm rushing to work and encounter a large aveidah that I cannot take with me. I would have to turn around and bring it back home slowly before going to work. Must I tend to it?**

**A:** Although you are required to expend time and effort for *hashavas aveidah* without compensation, you are not required to suffer financial loss. Therefore, if returning

the *aveidah* will cause you financial loss, or even loss of earnings, you are not obligated, although you should still make an effort. If you can easily fill in the missing time or the owner commits to compensate for the loss, you are obligated.

You can also stipulate with the owner or others nearby that you will tend to the *aveidah* if the owner will fully compensate you (C.M. and Sma 264:1, 265:1; Pischei Choshen,

*Aveidah* 8:2-8).

Similarly, if tending to the *aveidah* will cause you to miss your bus or train, you are not obligated. However, you cannot claim that it will cause you to miss learning Torah — since the purpose of learning is to fulfill *mitzvos* (*Hashavas Aveidah K'halachah* 10:5, 7). The owner is also required to compensate you for expenses associated with tending to the *aveidah* (C.M. 267:26).

## MONEY MATTERS

### DID YOU KNOW?

If your child misses a scheduled tutoring session, you may be obligated to pay for the session.

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